

1 SB124  
2 216375-5  
3 By Senator Scofield  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 01-FEB-22

1 SB124

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4 ENROLLED, An Act,

5 Relating to the Alabama Broadband Accessibility Act;  
6 to amend Sections 41-23-211, 41-23-212, 41-23-213, and  
7 41-23-214, Code of Alabama 1975; to increase the minimum  
8 threshold speeds for broadband service grants; to include  
9 references to the Alabama broadband mapping program and  
10 state-wide connectivity plan; to revise criteria and  
11 eligibility for the awarding of grants; to revise the window  
12 for grant applications; to revise the grant application  
13 procedures; and to allow for a project extension in certain  
14 circumstances.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 41-23-211, 41-23-212, 41-23-213,  
17 and 41-23-214, Code of Alabama 1975, are amended to read as  
18 follows:

19 "§41-23-211.

20 "The Legislature finds that the availability of  
21 high-speed broadband services, with the preference of speeds  
22 of ~~25~~ 100 megabits per second of download speed and ~~three~~ 100  
23 megabits per second of upload speed or greater, in unserved  
24 rural Alabama is important for economic development,  
25 education, health care, and emergency services in Alabama, and

1 that grants and other incentives set forth in this article  
2 will further those objectives by encouraging new investment in  
3 broadband infrastructure.

4 "§41-23-212.

5 "For the purposes of this article, the following  
6 words have the following meanings:

7 "(1) ADECA. The Alabama Department of Economic and  
8 Community Affairs.

9 "(2) END USER. A residential, business,  
10 institutional, or government entity that uses broadband  
11 services for its own purposes and does not resell such  
12 broadband services to other entities. An Internet service  
13 provider (ISP) and mobile wireless service provider are not an  
14 end user for the purposes of Sections 41-23-212, 41-23-213,  
15 and 41-23-214.

16 "(3) MIDDLE MILE PROJECT. A broadband infrastructure  
17 project that does not provide broadband service to end users  
18 or to end-user devices.

19 "(4) MINIMUM SERVICE THRESHOLD. A connection to the  
20 Internet that provides capacity for transmission at an average  
21 speed per customer of at least ~~25 megabits (25 Mbps)~~ 100  
22 megabits (100 Mbps) per second downstream and at least ~~three~~  
23 20 megabits (~~3~~ 20 Mbps) per second upstream.

24 "(5) RURAL AREA. Any area within this state not  
25 included within the boundaries of any incorporated city or

1 town having a population in excess of 25,000 inhabitants,  
2 according to the last federal census.

3 "(6) UNSERVED AREA. Any rural area in which there is  
4 not at least one provider of terrestrial broadband service  
5 that is either: (1) offering a connection to the Internet  
6 meeting the minimum service threshold; or (2) ~~is required,~~  
7 ~~under the terms of the Federal Universal Service Fund or other~~  
8 ~~federal or state grant,~~ another state or federal grant to  
9 provide a connection to the Internet at speeds meeting the  
10 minimum service threshold ~~by March 28, 2023~~ within the same or  
11 similar timeframe of projects of similar complexity or scale  
12 awarded during each grant cycle.

13 "§41-23-213.

14 "(a) The Director of ADECA may establish and  
15 administer the broadband accessibility grant program for the  
16 purpose of promoting the deployment and adoption of broadband  
17 Internet access services to unserved areas. ~~By June 26, 2018,~~  
18 ~~the~~ The director shall adopt rules and policies to administer  
19 the program and begin to accept applications for grants, and  
20 shall adopt such rules as may be necessary to meet the future  
21 needs of the grant program.

22 "(b) The program shall be administered pursuant to  
23 policies developed by ADECA in compliance with this article.  
24 The policies shall provide for the awarding of grants to  
25 ~~non-governmental~~ entities that are cooperatives, corporations,

1 limited liability companies, partnerships, or other private  
2 business entities, or units of government that provide  
3 broadband services. An entity is not eligible for a grant  
4 under this article unless the entity has submitted, within the  
5 one-year period preceding the awarding of the grant, the  
6 entity's broadband service availability information to  
7 Alabama's broadband mapping program. Nothing in this article  
8 shall expand the authority under state law of any entity to  
9 provide broadband service.

10 "(c) There is hereby created the Alabama Broadband  
11 Accessibility Fund in the State Treasury. The fund is subject  
12 to appropriations by the Legislature and gifts, grants, and  
13 other donations received by ADECA for the broadband  
14 accessibility grant program or fund. All state and federal  
15 grant monies deposited in the fund shall be expended by ADECA  
16 in accordance with the statewide connectivity plan and any  
17 legal requirements applicable to those grant monies, including  
18 their program eligibility, deployment, and reporting  
19 requirements. ADECA may not spend appropriations for the  
20 program for purposes other than those listed in this section.  
21 Any monies appropriated to ADECA for broadband grants that are  
22 unspent at the end of a fiscal year shall be carried over for  
23 use by the program in the next fiscal year. ADECA shall  
24 develop rules ensuring that expenses incurred to administer  
25 the program must not exceed the lesser of seven percent of the

1 total amount appropriated for the program in any fiscal year  
2 or seven hundred fifty thousand dollars (\$750,000). ~~Moneys~~  
3 Monies in the fund shall be invested by the State Treasurer  
4 for the sole benefit of the fund.

5 "(d) (1) Individual grants awarded by ADECA under  
6 this section may only be awarded for projects in unserved  
7 areas that will be capable of transmitting broadband signals  
8 at or above 100 megabits per second of download speed and 100  
9 megabits per second of upload speed, and may not exceed the  
10 lesser of:

11 "a. ~~Thirty-five~~ Eighty percent of the project costs.

12 "b. ~~One Five~~ million ~~five hundred thousand~~ dollars  
13 ~~(\$1,500,000)~~ (\$5,000,000) ~~for projects that will be capable of~~  
14 ~~transmitting broadband signals at or above the minimum service~~  
15 ~~threshold.~~

16 "(2) Grants may be given to any qualified entity  
17 pursuant to subsection (b) that meets the service criteria for  
18 expenditures ~~after March 28, 2018.~~

19 "(3) ADECA shall ensure that not less than 40  
20 percent of funds appropriated for grants be utilized in  
21 unincorporated areas of the state.

22 "(4) Subject to the limitations in this subsection,  
23 grants shall be awarded pursuant to the service criteria  
24 developed by ADECA, with priority given to projects that meet  
25 any of the following:

1           "a. Seek to leverage grant funds through private  
2 investment and extension of existing infrastructure.

3           "b. Serve locations with demonstrated community  
4 support, including, but not limited to, documented support  
5 from local government.

6           "c. Demonstrate the operator's technical and  
7 managerial capabilities to complete the project within ~~two~~  
8 years of the grant the required timeframe.

9           "d. Demonstrate the applicants' necessary financial  
10 resources.

11           "e. Are most cost effective and technically  
12 efficient in that they propose to serve the highest number of  
13 unserved homes, businesses, and community anchor points for  
14 the least grant fund cost and best level of service,  
15 emphasizing projects including the highest broadband speeds.

16           "f. Provide material broadband enhancement to  
17 hospitals, clinics, and other medical facilities located in  
18 rural areas.

19           "g. Support local libraries in this state for the  
20 purpose of assisting the libraries in offering digital  
21 literacy training pursuant to state library and archive  
22 guidelines.

23           "h. Provide support for the deployment of  
24 infrastructure to be owned and operated exclusively by  
25 Internet service providers serving subscribers in Alabama for

1 at least three years or organizations incorporated,  
2 headquartered, or with a principal place of business in  
3 Alabama.

4 "i. Commit to improving the adoption rate of  
5 broadband services by offering programs to households that  
6 meet guidelines established by ADECA or the funding source,  
7 including, but not limited to, special service rates,  
8 Internet-enabled devices that meet the needs of the user, and  
9 digital skills training.

10 "(5) For the purposes of awarding grants, ADECA  
11 shall take into consideration the average pole attachment  
12 rates that a grant applicant charges to an unaffiliated  
13 entity, provided that this subdivision shall not apply to a  
14 utility as defined under Section 37-4-1(7)a.

15 "(6) In order to promote the deployment of grant  
16 funds in an inclusive manner that is consistent with the  
17 racial, gender, geographic, urban, rural, and economic  
18 diversity of the state, ADECA may give additional  
19 consideration to an applicant that provides documentation that  
20 it has been certified by the ADECA Office of Minority Business  
21 Enterprise or otherwise as a Disadvantaged Business  
22 Enterprise. For projects funded under ~~Sections 41-23-212,~~  
23 ~~41-23-213, and 41-23-214~~ this article, ADECA shall encourage  
24 grant applicants to use vendors and subcontractors that have  
25 been certified by the Office of Minority Business Enterprise



1 or that are Disadvantaged Business Enterprises. ADECA shall  
2 include in its report to the Alabama Rural Broadband Oversight  
3 Committee a list of entities certified by the Office of  
4 Minority Business Enterprise and Disadvantaged Business  
5 Enterprises that have been awarded grants since the prior  
6 report.

7 "(e) For each ~~fiscal~~ year in which grant funds are  
8 available, ADECA shall accept applications within a  
9 60-to-90-day grant window that it shall establish. However,  
10 when necessary to meet the requirements of other funding  
11 sources, a grant window of 30 days may be established by  
12 ADECA. ADECA shall review each application for eligibility as  
13 determined by the state map. Any applicant submitting a  
14 project that includes served areas as documented by the state  
15 map shall be given an opportunity to revise the application to  
16 eliminate ineligible portions or rescind the application.  
17 Applications for eligible projects ~~will~~ shall be evaluated  
18 according to a scoring system developed by ADECA that  
19 incorporates the priorities listed in this section, with grant  
20 awards published ~~within 90 days after expiration of the filing~~  
21 ~~window~~ as soon as possible, but no more than 60 days after  
22 expiration of the filing window. Grant applications shall be  
23 ~~published by ADECA on the Internet at the end of the filing~~  
24 ~~window, and existing service providers shall have 30 business~~  
25 ~~days from the date of publication to file objections to the~~

1 ~~eligibility of a proposed project. ADECA shall address any~~  
2 ~~objections within 30 days of submission and shall make any~~  
3 ~~appropriate changes to grant awards based on a finding of~~  
4 ~~ineligibility resulting from such protest. Subject to such~~  
5 ~~protest procedure,~~ grants Grants issued by ADECA shall be  
6 conditioned upon compliance with the terms of the grant but  
7 shall not otherwise be revocable. Providers' grants shall be  
8 paid within 30 days upon ADECA receiving written certification  
9 of the completion of the project and evidence of compliance  
10 with the terms of the grant as prescribed by ADECA.

11 "(f) Grants shall be conditioned on project  
12 completion within two years of awarding of the grant.  
13 Applicants who demonstrate project complexity may request more  
14 than two years to complete the project. Recipients who  
15 demonstrate that the project is progressing may request an  
16 extension for up to one year for project delays beyond the  
17 recipient's control. If a recipient fails to complete a  
18 project within the two-year deadline, or within the extended  
19 deadline due to reasons other than delay caused by a  
20 government entity, ADECA may revoke the grant in its entirety  
21 and rededicate the funds to a new recipient.

22 "(g) ADECA shall condition the release of any grant  
23 funds awarded under this chapter on ~~both of~~ all of the  
24 following:

1           "(1) The progressive completion, as measured on not  
2 more than a quarterly basis, of the approved project. Grants  
3 for projects not showing progress may be rescinded.

4           "(2) Operational testing, when possible, to confirm  
5 the level of service proposed in the grant application. Such  
6 regulations shall not exceed in degree or differ in kind from  
7 testing and reporting requirements imposed on the grant  
8 recipient by the Federal Communications Commission, as  
9 adjusted for the service specifications in the ADECA grant  
10 agreement.

11           "(3) Continued participation in Alabama's broadband  
12 mapping program throughout the entire project period.

13           "(h) Notwithstanding any other provision of this  
14 section, eligible projects shall include any of the following:

15           "(1) Projects to serve unserved areas in which the  
16 grant applicant is either or both: a. an existing or future  
17 service provider which has or will receive support through  
18 federal universal service funding programs designed  
19 specifically to encourage broadband deployment in an area  
20 without broadband access; or b. an ~~existing or future service~~  
21 ~~provider~~ entity that currently provides services which has or  
22 will receive other forms of federal or state financial support  
23 or assistance, such as a grant or loan from the United States  
24 Department of Agriculture; provided, however, that any award  
25 of state funds under this section, when combined with other

1 forms of state or federal support or assistance dedicated to  
2 the project, other than interest-bearing loans, may not exceed  
3 ~~60~~ 90 percent of the total project costs. Nothing in this  
4 section shall prohibit a grant applicant who has not  
5 previously received any federal or state funds, grants, or  
6 loans for broadband deployment from applying for and receiving  
7 grant funds under this section.

8 "(2) Middle mile projects, where the applicant  
9 demonstrates that the project will connect other service  
10 providers eligible for grants under this section with  
11 broadband infrastructure further upstream in order to enable  
12 the providers to offer broadband service to end users;  
13 provided that eligible projects under this subdivision may  
14 include projects in an unserved area or a rural area that does  
15 not meet the definition of an unserved area but otherwise  
16 meets the requirements of this section, for which the grant  
17 applicant demonstrates, by specific evidence, the need for  
18 greater broadband speeds, access, capacity, resiliency, or  
19 service which is not being offered by an existing service  
20 provider.

21 "(3) Projects to provide broadband service to a  
22 specific hospital, health care facility, public school, public  
23 safety, or economic development site in a rural area that does  
24 not meet the definition of an unserved area but otherwise  
25 meets the requirements of this section, for which the grant

1 applicant demonstrates, by specific evidence, the need for  
2 greater broadband speeds, access, capacity, resiliency, or  
3 service which is not being offered by an existing service  
4 provider.

5 "(4) Grants issued under subdivisions (2) and (3)  
6 shall not exceed 40 percent of the total funds appropriated  
7 for grants on an annual basis.

8 "(i) Nothing in this section shall affect the  
9 approval and continued funding of grants awarded prior to May  
10 30, 2019.

11 "§41-23-214.

12 "(a) There is created the Alabama Rural Broadband  
13 Oversight Committee. The oversight committee shall consist of  
14 the Chair of the House Ways and Means Education Committee or  
15 his or her designee, the Chair of the Senate Finance and  
16 Taxation Education Committee or his or her designee, two  
17 members appointed by the Speaker of the House of  
18 Representatives, two members appointed by the President Pro  
19 Tempore of the Senate, and the Director of ADECA or his or her  
20 designee. The oversight committee shall meet at least  
21 annually, provide general oversight of the implementation of  
22 the article, and recommend further statutory changes to  
23 promote rural broadband development.

1           "(b) The oversight committee shall reflect the  
2 racial, gender, geographic, urban/rural, and economic  
3 diversity of the state.

4           "(c) For any year in which grants are distributed  
5 under the program, ADECA shall produce a report on the status  
6 of grants under the program to the oversight committee,  
7 including progress toward increased access to and adoption of  
8 broadband services. The report shall be provided at the  
9 oversight committee's first meeting of the year and be  
10 published on ADECA's website. ADECA shall provide a copy of  
11 the report to the Governor, the Alabama Senate President Pro  
12 Tempore, the Alabama Senate Minority Leader, the Speaker of  
13 the Alabama House of Representatives, and the Alabama House of  
14 Representatives Minority Leader. By March 28, 2019, ADECA  
15 shall produce a report on the availability of broadband within  
16 the state."

17           Section 2. This act shall become effective  
18 immediately following its passage and approval by the  
19 Governor, or its otherwise becoming law.

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB124

Senate 10-FEB-22

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,  
Secretary.

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House of Representatives  
Amended and passed 03-MAR-22

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Senate concurred in House amendment 08-MAR-22

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By: Senator Scofield